

# ***NATIONAL INDUSTRIES FOR THE BLIND***

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February 9, 2005

John Heyer, Esquire and  
Ms. Janet Yandik  
Committee for Purchase from People  
Who Are Blind or Severely Disabled  
1421 Jefferson Davis Highway  
Jefferson Plaza 2, Suite 10800  
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## **Reference: Docket Number 2004-01-01**

National Industries for the Blind (NIB) is pleased to submit comments on the substance of the proposed Rulemaking included in the referenced docket. As the Central Nonprofit Agency (CNA) designated by the Committee to assist nonprofit agencies for the blind participating in the JWOD program, NIB would be greatly affected by the proposed Rulemaking since (1) NIB as one of the two CNAs will be required to incur significant additional cost for investigating any alleged violations of the proposed governance and compensation standards by nonprofit agencies for the blind and reporting its findings and recommendations to the Committee; (2) as an unintended consequence of the proposed Rulemaking, NIB's core mission of creating, sustaining and improving employment opportunities for people who are blind is likely to negatively impacted; (3) NIB itself would be subject to the new governance and compensation standards; and, (4) As a CNA, NIB is required to represent its associated agencies in dealing with the Committee.

We note that the Committee has received a large number of comments in response to its proposed Rulemaking and that while most supported the objectives of the proposed Rulemaking, they also strongly opposed the Rulemaking itself as being an inappropriate method for achieving such objectives.

NIB's comments are structured in the form of a "Friend of the Government" brief designed to assist the Committee. They are divided into three parts. The first part proposes an alternate "self-regulatory" solution that would achieve the objectives of the Rulemaking but without direct federal intervention in the affairs of the private sector corporations; the second part addresses NIB's own ability to comply with the proposed Rulemaking by describing current NIB By-laws and Board policies related to Board composition, rotation, conflict of interest, as well as CEO and other employee compensation; while the third part includes summary comments on the proposed Rulemaking along with NIB's suggestions for addressing perceived "deficits" or "defects" in the Rulemaking.

**Part 1: Alternative to proposed Rulemaking: “self-regulatory” Solution that Achieves the Objectives of proposed Rulemaking:**

Selected statements by the Committee (emphasis supplied) from the notice of proposed Rulemaking are:

- “The proposed governance standards are primarily based on standards that are common practice in nonprofit and business communities.”
- “Recent accounts alleging, and public concern regarding, isolated instances of excessive compensation packages for nonprofit agency executives; a perceived lack of full disclosure in the financial reporting of nonprofit agencies; and the absence of formal guidelines to establish independent boards of directors for JWOD-affiliated central nonprofit agencies and nonprofit agencies prompted this proposed change.”
- “To date, the Committee's regulations have not included governance standards. While the Committee believes, based on its experience managing the JWOD Program, that the overwhelming majority of JWOD-affiliated central nonprofit agencies and nonprofit agencies operate in an ethical and accountable manner, recent accounts alleging (and public concern regarding) isolated instances of excessive compensation packages for nonprofit agency executives, a perceived lack of full disclosure in the financial reporting of nonprofit agencies, and the absence of formal guidelines to establish independent boards of directors for JWOD-affiliated central nonprofit agencies and nonprofit agencies have prompted the need for explicitly stated standards.”

NIB believes that the Committee has not satisfactorily explained why the proposed new federal standards are necessary, since the JWOD program (and its predecessor Wagner-O'Day program) have operated successfully for the past 66 years under the governance and compensation standards established and governed by IRS and various states. In fact, the alleged isolated problems could easily have been resolved through a direct approach targeting the “problem” agencies, without impacting the overwhelming majority of JWOD-affiliated central nonprofit agencies and nonprofit agencies, which according to the Committee itself, operate in an ethical and accountable manner. The Committee should have simply referred the “problem” agencies to the IRS for investigation and determination of whether or not any intermediate sanctions and/or the ultimate sanction of revocation of the nonprofit status were warranted. An agency that lost its nonprofit status as a result of IRS ruling would have automatically ceased to be a qualified nonprofit agency and thus would have forfeited its right to participate in the JWOD program.

To assist the Committee, we have developed an alternative “self-regulatory” solution that will achieve the objectives of the Rulemaking but without direct federal intervention in the affairs of the private sector nonprofit corporations. Guiding principles we used were:

- Whenever possible, use existing Laws, Regulations and available sanctions,
- Whenever possible, use existing accreditation models and/or organizations,
- Whenever possible, use JWOD infrastructure and Regulations (e.g., nonprofit agencies must be represented by a CNA) to achieve the desired objectives, and
- Remedies should be proportionate to the problem.

**Alternative “self-regulatory” solution:**

The alternative uses self-regulation and oversight, as well as the existing JWOD infrastructure and Regulations (specifically the JWOD Regulation at 41 CFR 51-4.1 which requires that in order to participate in the JWOD program, a nonprofit agency must be represented by a CNA) to achieve the objectives.

- The two CNAs will voluntarily agree to take a lead regarding governance and compensation issues at their own expense without increasing the cost to the federal government;
- The CNAs will adopt modified standards for association to include many of the governance and compensation issues included in the proposed Rulemaking;
- The association standards will be based on standards adopted by industry accrediting bodies and/or nonprofit associations after being suitably modified for the JWOD program;
- Any alleged violation of these association standards by an associated nonprofit agency will be investigated by the CNA Board Association Committee;
- The Board Association Committee will gather facts and evidence, after giving the affected nonprofit agency an opportunity to present its own case, facts and evidence;
- The Board Association Committee will then make a recommendation to the CNA Board on whether or not the nonprofit agency should continue to be associated with the CNA;
- If the Board decides to revoke the association of the nonprofit agency, such a decision will not be effective for at least 180 days, to allow the nonprofit agency an opportunity to either cure any defects, or to appeal the CNA Board decision to the Committee;
- If the associated agency appeals to the Committee and the Committee overrules the CNA Board decision, the nonprofit agency continues its association with the CNA and continues its participation in the JWOD program;
- However, if the Committee re-affirms the CNA Board decision, the nonprofit agency ceases to be associated with the CNA and thus loses its ability to participate in the JWOD program.

**Part 2: NIB's Ability to Comply with the Proposed Rulemaking:**  
**Discussion of Current NIB By-laws and Board Policies related to Board composition,**  
**rotation, conflict of interest, as well as CEO and other employee compensation**

While the current NIB By-laws and Board policies already address most of the governance and compensation requirements included in the proposed Rulemaking, additional policies may be needed to ensure full compliance. Therefore, while the adoption of the proposed Rulemaking will add Regulatory burden on NIB (including the need for a second audit, and additional resources needed for investigating alleged violations by nonprofit agencies,) it will result in only minor changes to NIB's governance and compensation policies. The following paragraphs discuss the new governance and compensation requirements (41 CFR 51-2.10) along with the enclosed NIB By-laws and Board policies.

**A. New Board governance requirements per 41 CFR 51-2.10(a):**

(1) Board does not include family members of the management team,

**NIB Comment** – We agree with this requirement. This is covered in NIB Bylaws, Article III, Section 2, Composition of the Board of Directors and Term of Office, which states that 10 members of the Board shall consist of CEOs of associated agencies, and the remaining 10 members shall consist of persons from the private sector. Furthermore, NIB's conflict of interest policy prohibits former NIB staff members to serve on the Board.

(2) Does not have a Chairperson also serving as CEO or equivalent,

**NIB Comment** – We agree with this requirement. This is covered in Article IV, Section 1, which only allows the office of Secretary and Treasurer to be held by the same person, and the Vice Chairman can also be the Secretary and Treasurer. Thus, the Chairman cannot also serve as the CEO.

(3) Has an audit committee, and audits are conducted by an independent audit firm overseen by the audit Committee,

**NIB Comment** – We agree with this requirement. This is covered by NIB Bylaws, Article III, Section 13 a, which requires the audit committee to meet on at least an annual basis with outside auditors.

(4) Reviews and certifies executive compensation packages, develops and implements an annual evaluation process covering Board, CEO etc.,

**NIB Comment** – We agree with this requirement. Currently the NIB Executive Committee evaluates the CEO's performance against pre-established objectives and compensation on an

annual basis. Any changes to the CEO's compensation are approved by the Board. The Board is also involved in adopting policies that govern changes in employee compensation levels.

(5) Adopts a conflict of interest policy, discloses all members' business relationships with the corporation as part of the policy,

**NIB Comment** – We agree with this requirement. This is covered by NIB Bylaws, Article III, Section 15 as well as NIB's conflict of interest policy. Conflict of interest training is held for all directors on an annual basis, and all disclosures are reported to the Board and filed with the minutes of the Corporation. In addition, the Assistant Secretary and Parliamentarian monitors all votes at each Executive Committee and Board meeting, and reports to the Chairman of the Board and Chairman of the Ethics Committee the votes on issues where directors have recused themselves from discussion and vote.

(6) Turns over Board membership on a recurring basis,

**NIB Comment** – We agree with this requirement. This is covered by NIB Bylaws, Article III, Sections 2, 3 and 4.

(7) Reviews and validates all IRS form 990's and attachments, and certifies that such filings identify all sources of compensation income from the organization or related entities,

**NIB Comment** – We agree with the intent of this requirement. However, the current policy requires CEO, rather than the Board to validate IRS 990 form information.

(8) Has at least one financial expert serving,

**NIB Comment** – We agree with this requirement. No current Board policy; however, it has been the practice that at least one member of the audit and finance committee be a financial expert. Currently, five out of six members of the audit and finance committee are financial experts.

(9) Publishes or makes public minutes of the Board meetings,

**NIB Comment** – We do not agree with this requirement. No current Board policy.

**B. New requirements for assessing CEO compensation per 41 CFR 51-2.10(b):**

41 CFR 51-2.10(b) states that "In assessing the reasonableness of executive and other employee compensation, **the Committee** will consider: (emphasis added)

(1) Size and complexity of agency's charter or mission,

- (2) The mission area,
- (3) Geographic size and financial condition of the agency,
- (4) Technical and professional qualifications required,
- (5) Compensation packages at comparable nonprofits,
- (6) Percentage of net revenue from JWOD program paid to employees and senior management,
- (7) The extent to which the compensation package exceeds the package for typical, highest paid, senior executive service, Career Federal government employee.”

**NIB Comment** - Paragraph (b) lists seven factors that the Committee will “consider” in its deliberations, but does not include any “objective” standards or criteria for this purpose. Since the proposed Rulemaking does not establish “objective” standards for assessing reasonableness of CEO and other employee compensation, it is virtually impossible for the NIB Board to adopt new policies that will ensure that it is in full compliance with the requirements of paragraph (b). Please note however, that the NIB Board does currently have detailed policies covering CEO and other employee compensation including the requirement for annual surveys to maintain both internal equity and external competitiveness. NIB specifically opposes tying the executive compensation to the compensation for typical, highest paid, senior executive service, Career Federal government employee, because their functions, duties and liabilities are not comparable and because it does not take into account the size and resources of the organization. Instead we suggest the Committee should simply require that the Board must have a formal, documented process for determining executive compensation levels.

**C. New Certification requirement per 41 CFR 51-2.10(c)(1):**

Under paragraph (c)(1) the CNAs are being asked to certify to the Committee that “the governance standards set forth in paragraphs (a) and (b) of this section have or have not been met on the annual certification form required by section 51-4.2(c) of this chapter.”

**NIB Comment** – NIB can certify whether or not the governance standards of paragraph (a) have been met, but not those of paragraph (b). The responsibility for paragraph (b) lies with the Committee which is required to “consider” the seven “subjective” factors in determining the reasonableness of CEO and other employee compensation. NIB is not in a position to certify whether or not the Committee has considered these “subjective” factors in determining the reasonableness of compensation.

**D. New investigation requirements per 41 CFR 51-2.10(d)(2):**

Under paragraph (d)(2) CNAs are charged with investigating “violations of governance standards set forth in paragraphs (a) and (b) of this section by qualified nonprofit agencies participating in the JWOD program . . . . in accordance with 41 CFR 51-4.5.”

**NIB Comment** – Once again, although as a result of its investigation, NIB can certify whether or not the governance standards of paragraph (a) have been met by the affected nonprofit agency, it is virtually impossible for NIB to certify whether or not the governance standards of paragraph (b) have been met. Paragraph (b) requires the Committee to “consider” the seven “subjective” factors in evaluating the reasonableness of the CEO and other employee compensation by the nonprofit agency. NIB is simply not in a position to certify whether or not the Committee has considered these “subjective” factors in determining the reasonableness of compensation.

### **Part 3: Summary Comments and Suggestions:**

Although NIB anticipates that the Committee will find the alternative described in Part 1 to be acceptable, we are also providing honest comments and feedback as requested by the proposed Rulemaking. Our substantive comments on the proposed Rulemaking are summarized in five categories. Since similar comments have already been submitted by many other organizations, we have kept our own comments brief. However, if necessary, we stand ready to provide additional details to the Committee. NIB is also providing suggestions designed to assist the Committee address each category of comments in order to “cure” perceived “deficits” or “defects” in the proposed Rulemaking.

#### **Summary Comment #1:**

**The Committee will exceed its statutory authority under the JWOD Act by adopting a Rule that (1) is not *necessary* for the *purposes* of the JWOD Act; (2) will modify through regulatory action, the Congressionally enacted definitions of qualified nonprofit agencies included in the JWOD Act itself; (3) will, contrary to the JWOD Act, abridge the economic rights of certain nonprofit agencies (e.g. agencies meeting minimum standards established by Congress for JWOD participation, but not meeting the additional standards being established by the Committee); and (4) is contrary to the purposes and intent of the JWOD Act since it will curtail rather than increase employment opportunities - through the loss of employment for people currently working in a nonprofit agency that is subsequently disqualified by the Committee under the new Rules; through discouragement of new NPAs wishing to participate in the JWOD program; and through diversion of significant NPA, CNA and the Committee resources away from the JWOD program’s employment mission.**

#### **NIB Suggestion #1:**

In our view, these represent significant “legal” barriers to the adoption of the proposed Rulemaking. They lead to the conclusion that the proposed Rulemaking cannot be “cured” short of legislative action by Congress. The alternatives available to the Committee are to (1)

get the Congress to modify the current definitions of qualified nonprofit agencies included in the JWOD Act to be consistent with the Committee's proposed Rulemaking; and/or (2) obtain a specific grant of authority from Congress that would permit the Committee to amend the JWOD Act through the Rulemaking process.

**Summary Comment #2:**

**The proposed Rulemaking may be procedurally "deficient" since it (1) proposes many standards under 41 CFR 51-2.10 (a) and (b) that are "subjective"; (2) does not clearly inform the affected parties what "objective" standards or criteria the Committee will use to evaluate them; (3) will make it virtually impossible for the CNAs to investigate and report on alleged violations - as required by 41 CFR 51-4.5 - based on such "subjective" standards; and (4) will result in arbitrary, and/or inconsistent decision-making by the Committee.**

**NIB Suggestion #2:**

If the Committee decides to proceed, it could "cure" the procedural "deficits" in the proposed Rulemaking by (1) adopting "objective" standards and criteria for each of the several factors (e.g., recurring board turnover) it plans to use in evaluating the nonprofit agencies and central nonprofit agencies; (2) providing clear definitions of any subjective terms (e.g., "comparable" nonprofit agencies) included in its evaluation standards; and (3) publishing such "objective" standards and criteria as well as definitions in the next iteration of the proposed Rulemaking for further public comment.

**Summary Comment #3:**

**The proposed Rulemaking may be procedurally "defective" since several assertions by the Committee under the "Certifications and Required Determinations" section appear to be incorrect.**

**NIB Suggestion #3:**

If the Committee decides to proceed, it could "cure" the perceived procedural "defects" in the proposed Rulemaking by (1) reviewing each of the assertions made by the Committee in light of various comments received; (2) identifying any "misstatements" in the assertions that need to be corrected; (3) preparing the revised Certification language, if necessary; (4) completing various analyses that would be required as a result of any revised Certification language (e.g., unfunded mandates analysis); and (5) publishing the revised Certifications and related analyses as part of its next iteration of the proposed Rulemaking for further public comment.

**Summary Comment #4:**



**The proposed Rulemaking duplicates and/or is in conflict with numerous federal and state laws, and Regulations.**

**NIB Suggestion #4:**

Several of the comments suggested that because of the strong federalism and other related implications of the proposed Rulemaking, the Committee may face significant legal barriers in adopting it. As the Committee itself is aware (1) if a proposed federal Regulation conflicts with a federal law, the federal law takes precedence; (2) Regulatory Rulemaking cannot pre-empt state laws – only Congress can do that; and (3) the Executive Branch of the Federal government cannot legislate via Regulatory Rulemaking. However, if the Committee concludes that the above objections can be successfully overcome and decides to proceed, we suggest that it modify the proposed Rulemaking by (1) identifying and wherever possible eliminating each instance of duplication and/or conflict with existing federal and state laws and Regulations; (2) identifying and eliminating each instance where the proposed Rulemaking inadvertently attempts to legislate through the Regulatory process, (3) clearly articulating whether or not the Committee's proposed Rule will pre-empt any of the existing federal and state Laws and Regulations, and if so the legal authority for this conclusion; (4) clearly communicating to affected nonprofit agencies and CNAs how they can avoid sanctions and penalties from other federal and state regulatory agencies for violations of certain federal and/or state laws and Regulations under their purview - in those specific instances where the Committee's new Rule would take precedence over existing laws and Regulations; and (5) publishing all of the above information in the next iteration of the proposed Rulemaking for further public comment.

**Summary Comment #5:**

**The proposed Rulemaking may also be duplicative of and/or be in conflict with new Laws related to nonprofits that may be adopted in the future by Congress, various state legislatures as well as new Rules that may be adopted by the IRS as a result of its current investigation of nonprofit compensation practices.**

**NIB Suggestion #5:**

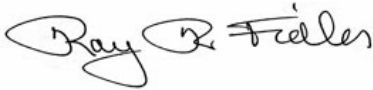
We believe the Committee may possibly have the ability to address these issues by taking certain actions. While it is impossible to know ahead of time what new laws and/or Regulations will be adopted by Congress, various states and the IRS, NIB feels that the Committee could address the issue by (1) developing, adopting and communicating to affected parties a transparent process that it will use for determining in the future whether any duplication and/or conflict exists between the new laws and Regulations and the Committee's

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new Rule; (2) explaining the process for determining whether any of the new laws or Regulations would take precedence over the Committee's Rule; (3) explaining the process of how NPAs and CNAs can avoid penalties for violating such new laws and Regulations in those instances where the Committee determines that its Rule will take precedence; and (4) publishing all of the above information in the next iteration of the proposed Rulemaking for further public comment.

NIB appreciates the opportunity to submit these comments. We stand ready to work with the Committee to resolve this important matter. Please advise if we can provide any additional information.

Sincerely,

A handwritten signature in black ink that reads "Ray Fidler". The signature is written in a cursive style with a large, stylized "R" and "F".

Ray Fidler, Chairman  
NIB Board of Directors

cc: Jim Gibbons, President & CEO, NIB

Enclosure: NIB Board Conflict of Interest Policy

**NATIONAL INDUSTRIES FOR THE BLIND  
CONFLICTS OF INTEREST POLICY  
FOR OFFICERS AND DIRECTORS**

**ARTICLE I  
BACKGROUND**

The unusual structure of the NIB Board of Directors implies that it may include interested parties among its members. Each of these parties may from time to time be exposed to a circumstance in which participation in the consideration and vote regarding a matter would constitute a conflict of interest, which conflict such party shall declare as herein below. This policy addresses the means by which that risk is managed by the Board of Directors.

**ARTICLE II  
POLICY**

It is the policy of the Board of Directors of National Industries for the Blind (NIB) to adhere rigorously to the highest ethical standards. The nature of NIB's business requires that each officer and member of the Board of Directors maintain exemplary integrity and ethical standards, and avoid even the appearance of impropriety. To this end, the following principles have been confirmed as policy.

**ARTICLE III  
PURPOSE**

The purpose of the conflicts of interest policy is to protect the interest of NIB when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of NIB. This policy is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations.

**ARTICLE IV  
DEFINITIONS**

1. Interested Person

Any director, officer, or member of a committee with board delegated powers who has a direct or indirect financial interest, as defined below, is an interested person.

2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment or family:

- a. an ownership or investment interest in any entity with which NIB has a transaction or arrangement, or

- b. a compensation arrangement with NIB or with any entity or individual with which NIB has a transaction or arrangement, or
- c. a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which NIB is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

A financial interest is not necessarily a conflict of interest. Under Article IV, Section 2, a person who has a financial interest may have a conflict of interest only if he/she, or the board, or an appropriate committee decides that a conflict of interest exists.

Examples of individual conflicts of interest include, but are not limited to: associated agency-specific or business-specific matters including any contract, payment, loan, grant, sale, purchase, exchange, debt, forgiveness, forbearance, or other financial matter related to an individual director's agency or business interest and NIB.

Examples of general conflicts of interest include, but are not limited to: changes, rebates, or other adjustments in the commission fee charged NIB-associated agencies on the sale of products sold or services provided to the government under the Javits-Wagner-O'Day Act program; the creation, alteration, or elimination of financial assistance programs that benefit associated agencies, such as grants, loans, incentives, etc.; and other programs or actions involving direct disbursements of funds to associated agencies. Consideration and approval of NIB's annual operating budget is not considered a general conflict of interest.

## **ARTICLE V PROCEDURES**

### **1. Duty to Disclose**

In connection with any actual or possible conflicts of interest, an interested person must disclose the existence of his or her financial interest and must be given the opportunity to disclose all material facts to the directors and members of committees with board delegated powers considering the proposed transaction or arrangement. Interested persons may conclusively acknowledge their conflict and agree to the procedures required herein.

### **2. Determining Whether a Conflict of Interest Exists**

In the event an interested person does not acknowledge his/her conflict, and after disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

### **3. Procedures for Addressing the Conflict of Interest**

An interested person may make a presentation at the board or committee meeting, but after such presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.

The chairperson of the board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the board or committee shall determine whether NIB can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.

If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the best interest of NIB and for its own benefit and whether the transaction is fair and reasonable to NIB and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

#### 4. Violations of the Conflicts of Interest Policy

If the board or committee has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, including but not limited to referral to the Ethics Committee or use of management personnel, the board or committee or Ethics Committee determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

### **ARTICLE VI RECORDS OF PROCEEDINGS**

The minutes of the board and all committees with board-delegated powers shall contain:

- a. the names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the board's or committee's decision as to whether a conflict of interest in fact existed; and
- b. the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

### **ARTICLE VII COMPENSATION**

A voting member of the board of directors or officer of NIB who receives compensation, directly or indirectly, from NIB for services is precluded from voting on matters pertaining to that person's compensation and precluded from presence in the meeting when such vote takes place.

A voting member of any committee or officer of NIB whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from NIB for services is precluded from voting on matters pertaining to that person's compensation and precluded from presence in the meeting when such vote takes place.

## **ARTICLE VIII ANNUAL DISCLOSURE STATEMENTS**

Each director, officer and member of a committee with board delegated powers shall, at each year's spring Board Meeting, or, at latest, before May 31<sup>st</sup> of any given year, sign and deliver to the Chairman of the Board of NIB a statement which affirms that such person:

- a. has received a copy of the conflicts of interest policy,
- b. has read and understands the policy,
- c. has agreed to comply with the policy, and
- d. understands that NIB is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes; and
- e. discloses whether or not the person has any reportable financial interest.

Any material change in the representations made in the Disclosure Statement shall be reported in detail immediately to the Chairman of the Board of NIB.

## **ARTICLE IX BOARD MEMBERSHIP**

In order to avoid even the appearance of impropriety or conflict, the following limitations will apply to eligibility of persons to be members of the Board of Directors of NIB:

- a. Current employees (other than the chief administrator as set forth in greater detail in the By-Laws) and current members of the Board of Directors of associated agencies cannot serve on or stand for election to the Board of Directors of NIB; provided, however, that any Director serving on the Board of NIB at the time of passage of this Policy shall retain his membership until the end of his present tenure;
- b. Former members of the Board of Directors of associated agencies shall not be eligible to stand for election to the Board of Directors of NIB until one full year after the date of termination of their membership on the Board of such associated agency;

- c. In no event may a former employee of NIB or any associated agency be eligible to stand for election to, or serve as a member of, the Board of Directors of NIB; and
- d. Persons employed by or related to organizations (other than associated agencies) which contract with NIB or sell to the government through NIB are eligible to serve as members of the Board of Directors of NIB. However, in such cases concerns regarding the potential appearance of impropriety or conflict should be carefully considered by the Board before acting. Identification of and invitation to such persons to serve on the Board shall solely be made on the basis of individual merit and not on the basis of such contract or relationship.

## **ARTICLE X PERIODIC REVIEWS**

To ensure that NIB operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. whether compensation arrangements and benefits are reasonable and are the result of arm's-length bargaining; and
- b. whether business arrangements with organizations that are affiliated with a board director or committee member conform to written policies, are properly recorded, reflect reasonable payments for goods and services, further the charitable purposes of NIB and do not result in inurement or impermissible private benefit.

## **ARTICLE XI USE OF OUTSIDE EXPERTS**

In conducting the periodic reviews provided for in Article IX, NIB may, but need not, use outside advisors. If outside experts are used their use shall not relieve the board of its responsibility for ensuring that periodic reviews are conducted.

The chairman of the board shall, in his/her discretion, name or employ the services of a certified or registered parliamentarian who may or may not be a director, whenever possible, at every board and executive committee meeting whose duties will include:

- a. maintaining orderly process at meetings of the board and the executive committee, according to *Roberts Rules of Order Newly Revised*
- b. on behalf of the chairman, implementing of the articles of this policy
- c. counseling the board respecting matters relevant to this policy.

In cases where a certified or registered parliamentarian is not available, the chairman will appoint another person to act in this capacity.

Approved by the NIB Board on May 3, 2002

